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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,405	06/24/2003	Christ Pher Oriakhi	200300746-1	4185

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EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,405

Applicant(s)

ORIAKHI ET AL.

Examiner

Paul Marcantoni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 12-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 42-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's arguments and RCE filed 2/21/06 have been fully considered but they are not persuasive.

35 USC 103:

Claims 1-11 and 42-52 are rejected under 35 USC 103(a) as obvious over Bredt ^{vs} et al. (~~US~~ Pub. No. 2001/0050031) alone or in view of Jang et al. and Unsin '474 B1.

Response:

The applicants repeat arguments also made and responded to in the examiner's final rejection mailed 11/17/05. A further detailed description to the present arguments can also be made from the examiner's response in this final rejection response to arguments. The applicants argue again that they use a different order of ingredients for their method versus Bredt. As stated previously, changes in the sequence of adding ingredients would have been obvious to one of ordinary skill in the art absent evidence to the contrary. In re Gibson 5 USPQ 230 (see p.4 of examiner's 11/17/05 final rejection as well).

The applicants also amend their claims to indicate their dispensing means is now limited to "ink jetting". Applicants allege ink-jetting is not within the teaching of Bredt. The examiner disagrees. In paragraph [0013], Bredt clearly teaches the use of electromechanical *ink-jet* printheads to deliver the fluid compositions. Further, even assuming Bredt did not teach ink jetting, it is the examiner's position that the use of one dispensing means over another would have been an obvious design choice for one of ordinary skill in the art. The applicants even acknowledge in their own specification that

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their dispensing can be performed by means other than ink jetting. They state on line 4 of page 6 of their specification that their invention is not limited to ink jetting as a dispensing means. It is the examiner's position that this makes it clear that the applicants admit that any known conventional means of dispensing would suffice and one method is not unexpected over the other. Further, ink jetting as a dispensing method is a method conventionally used for dispensing in the art.

The applicants hold that the secondary references do not teach ink jetting. It is evident applicants are arguing references individually without addressing the combination of references in the examiner's rejection. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Also, as stated on page 5 in the examiner's final rejection response to arguments, the use of a colorant for aesthetic/decoarative purposes would have been an obvious design choice for one of ordinary skill in the art for cements such as calcium aluminate. Finally, the use of an accelerator for cements such as calcium aluminate is also notoriously known in the art. Accelerators such as those containing lithium are conventionally used to increase the time of setting of a cement composition.

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The examiner has fully responded to arguments and the finality of this office action is now proper. This is an RCE of applicant's earlier Application No. 10/603,405. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



Paul Marcantoni
Primary Examiner
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